

ORIGINAL

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11-12-09

STANTON/S

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

)
VIACOM INTERNATIONAL INC.,)
COMEDY PARTNERS,)
COUNTRY MUSIC TELEVISION, INC.,)
PARAMOUNT PICTURES CORPORATION,)
and BLACK ENTERTAINMENT TELEVISION) Civil Action No. 07-CV-2103
LLC,) Judge Stanton
Plaintiffs,)
v.)
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE INC.,)
Defendants.)

STIPULATION & ORDER
REGARDING CERTAIN OF
DEFENDANTS'
COMMON INTEREST
PRIVILEGE ASSERTIONS

Doc. 157

Viacom International, Inc. et al v. YouTube, Inc. et al)
THE BOYBAND ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO. (together)
with its affiliate MURBO MUSIC PUBLISHING,)
INC., CHERRY LANE MUSIC PUBLISHING)
COMPANY, INC., CAL IV ENTERTAINMENT)
LLC, ROBERT TUR d/b/a LOS ANGELES)
NEWS SERVICE, NATIONAL MUSIC)
PUBLISHERS ASSOCIATION, THE RODGERS) Civil Action No. 07-CV-3582
& HAMMERSTEIN ORGANIZATION, STAGE) Judge Stanton
THREE MUSIC (US), INC., EDWARD B.)
MARKS MUSIC COMPANY, FREDDY)
BIENSTOCK MUSIC COMPANY d/b/a)
BIENSTOCK PUBLISHING COMPANY,)
ALLEY MUSIC CORPORATION, X-RAY DOG)
MUSIC, INC., FEDERATION FRANCAISE DE)
TENNIS, THE SCOTTISH PREMIER LEAGUE)
LIMITED, THE MUSIC FORCE MEDIA)
GROUP LLC, THE MUSIC FORCE LLC, and)
SINDROME RECORDS, LTD. on behalf of)
themselves and all others similarly situated,)
Plaintiffs,)
v.)
YOUTUBE, INC., YOUTUBE, LLC and)
GOOGLE, INC.,)
Defendants.)

WHEREAS, Defendants in the above-captioned action have asserted a common interest privilege over certain communications between YouTube and Google that occurred prior to the execution of a long-form merger agreement between them,

WHEREAS, the parties have addressed those common interest privilege assertions in correspondence to the Court and at a pre-motion conference on July 17 2009,

WHEREAS, following the pre-motion conference on July 17 2009, Defendants provided Plaintiffs in the above-captioned actions (“Plaintiffs”) with a privilege log on July 27, 2009 (“July 27 Privilege Log”);

WHEREAS, Plaintiffs have objected to Defendants’ assertion of a claim of common interest privilege over the documents set forth on the July 27 Privilege Log, and in deposition;

WHEREAS, in order to resolve the parties’ dispute, Defendants have agreed to produce the documents set forth on the July 27 Privilege Log and to permit testimony subject to the terms and conditions set forth herein;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel of record, for the parties hereto, to the following terms:

1. Defendants’ Production of Documents from the July 27 Privilege Log.

Defendants agree to produce documents described on the July 27 Privilege Log without redaction within 14 days of the execution of this stipulation. Unless Defendants expressly indicate to the contrary, the production of documents pursuant to this Paragraph is not an indication that Defendants have withdrawn their initial claims of privilege,

although Defendants agree that they will no longer assert such a claim with respect to these documents.

2. **Production of Other Documents.** To the extent that Defendants locate any other documents in their collection that were exchanged between Google, YouTube, or any other potential acquirer prior to the execution of a long-form merger agreement between Google and YouTube, Defendants agree to produce such documents pursuant to the terms of this Stipulation. Furthermore, Defendants shall not assert a common interest privilege between YouTube and Google or between YouTube and any other potential acquirer that predates execution of a long-form merger agreement as a basis for objecting to the production of such documents that exist in the files of non-parties whom Plaintiffs have subpoenaed or will subpoena in the above captioned actions, including Sequoia Capital, Artis Capital, TriplePoint Capital, Credit Suisse, and former employees Jawed Karim and Gideon Yu.

3. **Deposition Testimony.** Defendants will allow witnesses at deposition to testify consistent with this Stipulation.

4. **Non-Waiver Agreement.** Plaintiffs agree that they will not argue that Defendants' voluntary production of documents or testimony pursuant to this Stipulation constitutes a subject matter waiver of privilege. The act of producing documents pursuant to this Stipulation shall not be used by Plaintiffs to support an argument that Defendants have waived privilege with respect to any other documents within their possession, custody or control. Plaintiffs may, however, make any other arguments based on the contents of any document or testimony produced pursuant to this Stipulation.

AGREED and STIPULATED

October 7, 2009

*Attorney for Viacom International Inc.,
Comedy Partners, Country Music Television,
Inc., Paramount Pictures Corporation, and
Black Entertainment Television, LLC*

By: Stuart J. Baskin/SBW

Stuart J. Baskin
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022
(212) 848-4000

AGREED and STIPULATED

October , 2009

*Attorney for YouTube, Inc., YouTube, LLC
and Google Inc.*

By: A. H. Schapiro/AHS

Andrew H. Schapiro
MAYER BROWN LLP
1675 Broadway
New York, NY 10019
(212) 506-2500

AGREED and STIPULATED

October 7, 2009

*Attorneys for Lead Plaintiffs, Named
Plaintiffs Murbo Music Publishing, Inc.,
Cherry Lane Music Publishing Company,
Inc., Robert Tur d/b/a Los Angeles News
Service, X-Ray Dog Music, Inc., Fédération
Française de Tennis, and The Scottish
Premier League Limited, and for the
Prospective Class*

By: Louis M. Solomon/lms

Louis M. Solomon
PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036-8299
(212) 969-3000

SO ORDERED

*Lori L. Stanton
11/10/09*